IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 27TH SEPTEMBER 2006 / 5TH ASWINA 1928

Crl.Rev.Pet.No. 575 of 2003()

AGAINST THE JUDGMENTS OF THE ADDITIONAL SESSIONS JUDGE (FAST TRACK – II), MANJERI IN CRL.R.P.NO.32/2000 AND IN M.C.NO.1 OF 1998 OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, PERINTHALMANNA.

REVN. PETITIONER: RESPONDENT/PETITIONER:

M.C. HASEENA, D/O. AHAMMED KUTTY,
VADAKKUMPARAMBU HOUSE, MUDIKKODE P.O.,
PANTHALLOOR, MALAPPURAM DISTRICT.

BY ADVS. M/S.BABU S. NAIR & RENJITH B.MARAR

RESPONDENTS: REVISION PETITINOER/CR PETITIONER & STATE:

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1. MUNDAKKAPARAMBAN ABDUL JALEEL,
S/O. MUHAMMED @ BICHAPPU, ELAYOOR,
MALAPPURAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

PUBLIC PROSECUTOR SRI.JIKKU
ADV. SRI.K.P.MUJEEB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/09/2006, ALONGWITH CRL.M.C.NO.11879 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

CRL.R.P.NO. 575 OF 2003

and

CRL.M.C.NO. 11879 OF 2002

Dated this the 27th day of September,2006

O R D E R

Crl.R.P.No.575 of 2003 is filed by the divorced wife while Crl.M.C.No.11879 of 2002 is filed by the former husband. The parties are Muslims. Their marriage was solemnized on 12.7.1996 and a child was born in that wedlock. On the 90th day after delivery of the child, the husband divorced her on 30.9.1997 by sending a letter to the mosque. The husband was working in Saudi Arabia at that time.

2. The divorced wife filed M.C.No.1 of 1998 against the former husband under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The divorced wife contended that at the time of marriage, the husband was paid a sum of

Rs.One lakh and thereafter, Rs.50,000/- was also paid. She also contended that she was given 50 sovereigns of gold, out of which, 30 sovereigns were appropriated by the husband. Value of the ornaments was also claimed. Claiming maintenance at the rate of Rs.2,000/- per month, a sum of Rs.6,000/- was claimed as maintenance during iddat period. For reasonable and fair provision and maintenance, a sum of Rs.3 lakhs was claimed.

3. Before the trial court, Pws.1 to 3 were examined on the side of the petitioner and CPW1, the father of the former husband was examined on the side of the respondent. Exts.P1, P2 and Ext.D1 were also marked in the case.

4. The trial court, though was inclined to accept the case of the wife that a sum of Rs.One lakh was paid at the time of marriage, no amount was awarded to her on that count, since, according

to the trial court, she failed to prove that the amount was misappropriated by the husband. The case put forward by the wife that a sum of Rs.50,000/- was paid to the former husband was held to be not proved. So also, the learned Magistrate held that there is no evidence to hold that the ornaments were misappropriated by the husband and the claim under that head was also rejected. The learned Magistrate held that towards maintenance during iddat period, the petitioner - divorced wife is entitled to claim a sum of Rs.4,500/- for a period of three months at the rate of Rs.1,500/- per month. A sum of Rs.Three lakhs as claimed was awarded by the court below as reasonable and fair provision and maintenance. Thus the trial court awarded a total sum of Rs.3,04,500/- in favour of the divorced wife.

5. Challenging the order passed by the learned Magistrate, Crl.R.P.No.32 of 2000 was filed by the

former husband and Crl.R.P.No.47 of 2000 was filed by the divorced wife before the Sessions Court. The revisional Court confirmed the decision of the trial court in respect of the money allegedly paid at the time of marriage and thereafter, and also the claim for value of ornaments. The amount awarded under the head `maintenance during iddat period' was also confirmed. The revisional Court, however, reduced the amount awarded under the head `reasonable and fair provision and maintenance' to a sum of Rs.Two lakhs as against Rs.Three lakhs awarded by the learned Magistrate.

6. In the Crl.R.P. filed by the divorced wife, she contends that the revisional Court was not justified in reducing the amount awarded as reasonable and fair provision and maintenance by the learned Magistrate and that the revisional Court exceeded its jurisdiction. In the Crl.M.C. filed by the former husband, he challenges even

the award of Rs.Two lakhs under the head "reasonable and fair provision and maintenance". According to the former husband, the court below erred in awarding a very huge amount of Rs.Two lakhs as reasonable and fair provision and maintenance.

7. It has come out in evidence that the parties belong to upper middle class families. At the time of marriage and even at the time of tendering evidence, the father of the divorced wife was working abroad. The former husband is also working in Saudi Arabia as a driver. At the time of marriage also he was working abroad. It has also come out in evidence that the father of the former husband is having three vehicles - a tractor and two commercial vehicles. According to the divorced wife, these vehicles were purchased by him not with his own funds, but with the funds provided by the former husband. She states that

the father of the former husband has no ostensible means and without the help and assistance of the former husband he could not have purchased the vehicles. The former husband, on the other hand, contends that he was earning only 400 riyals per month and that he lost even that job and he is continuing abroad without any job. Ext.D1 letter was also produced to substantiate his contention. Ext.D1 letter was issued by the former husband, which was marked through the divorced wife as she identified the handwriting. In the letter it is contended that the former husband is jobless.

8. At the time when the marriage took place, the wife was studying for Pre-Degree. There is no evidence whether at present she is studying. There is also no evidence to show that she discontinued her studies after marriage. At the time when she gave evidence, she was aged 20. After the divorce on 30.9.1997 till she gave evidence on 25.9.1999,

she did not remarry. There is no case for the former husband that she has entered into any other marital relationship. So, she continues to be a divorced wife and she has to maintain her child. The standard of living of the parties is clear from the evidence adduced by the parties; they belong to upper middle class strata. There is no case for any party that there is any financial stringency in the families of the parties. On the other hand, the evidence would indicate that both the families are financially sound.

9. The trial court fixed the maintenance at the rate of Rs.1,500/- per month and calculated the maintenance during the iddat period at Rs.4,500/-, which was confirmed by the revisional Court as well. The divorced wife has not challenged the same, though the former husband says that this amount is very high. Considering the status in life of the parties and the basic necessities of

the divorced wife and child, I do not think that the amount fixed at the rate of Rs.1,500/- per month is high. It can even be said that the amount fixed is low considering the practical realities of life.

10. The case of the former husband that he lost his job and he is remaining in Gulf without any job cannot be believed. The former husband did not appear before Court to adduce evidence. On the other hand, his father, who has no direct knowledge of the relevant facts except what is informed by his son, gave evidence. Ext.D1 is a self serving document on which no reliance can be placed. As regards the salary drawn by the former husband, his case in the counter is that he was getting only 400 riyals per month. The salary drawn by the former husband could very well be proved by documentary evidence. What exactly was that the salary drawn by him is a fact especially within his knowledge and under Section 106 of the Evidence Act, the burden is on him. The former husband having not discharged the burden of proof cast on him, the

divorced wife cannot be faulted for not proving the exact amount of salary drawn by the former husband. The evidence adduced by the wife in that respect is liable to be accepted in the absence of any positive evidence from the side of the husband, especially when the burden of proof is on him.

11. As regards the amount claimed under the head `reasonable and fair provision and maintenance', the revisional Court held thus:

> "There is no justification for allowing the entire claim of the petitioner (Rs.3,00,000/-) as `matah'. The fact that at the time of marriage the petitioner was studying for II PDC cannot be a criterion for awarding such a huge sum as `matah'. There is absolutely nothing to show that the petitioner continues her studies even after divorce. Moreover, the petitioner did not claim her educational expenses within the head `matah'. Even if the petitioner continues her study after divorce, it shall not be at the expense of the counter petitioner, because law does not make the former husband liable to educate or to meet the educational expenses of his divorced wife. So, in my opinion, reasoning of the learned Magistrate in para 11 of the impugned order is totally unwarranted and unsustainable. The term `fair and reasonable' in Section 3(1) of Act 25 of 1986 will not include a `highly expensive education'."

12. "Reasonable and fair provision and maintenance" is payable by the former husband on divorce under Section 3 of the Act. This Court in **Ali** v. **Sufaira** (1988 (2) K.L.T.94), held after quoting the Holy Quran, thus:

> "From this it is clear that the Muslim who believes in God must give a reasonable amount by way of gift or maintenance to the divorced lady. That gift or maintenance is not limited to the period of iddat. It is for her future livelihood because – God wishes to see all well. The gift is to depend on the capacity of the husband. The gift, to be paid by the husband at the time of divorce, as commanded by the Quran, is recognised in sub-clause (a) of Clause (1) of S.3 of the Act. This liability is cast upon the husband on account of the past advantage received by him by reason of the relationship with the divorced woman or on account of the past dis-advantage suffered by her by reason of matrimonial consortium. It is in the nature of a compensatory gift or a solatium to sustain the woman for her life after the divorce."

A Division Bench of this Court in **Aliyar** v. **Pathu** (1988 (2) KLT 446), has also considered the scope and ambit of the expression "reasonable and fair provision and maintenance" occurring Section 3 of the Act, and held

thus:

> "Under clause (a) of sub-s.3(1) of the Act, divorced wife is entitled to *reasonable and fair provision to be made and maintenance to be paid* within the Iddat period. The clause emphasizes that *provision* is to be made and *maintenance* is to be paid. Of course *provision* is to be made to secure livelihood of the wife. That need not be in the shape of money; it could be in the shape of provision by grant of immovable property of other valuable assets or other income yielding property. *Provision* has to be made within the Iddat period; it has to be fair and reasonable. *Provision* must certainly be capable of being realised or secured by her. Besides the *provision* to be made, she is also entitled to be paid *maintenance during the period of Iddat*. The expressions *reasonable and fair provision and maintenance* to be *made and paid* cannot be understood to have been used disjunctively. In the context `and' cannot mean `or'. The two expressions convey different ideas and give rise to two different connotations. The argument is that just as maintenance is to be paid to cover the needs of the divorced woman during the Iddat period, reasonable and fair provision is to be made only for the Iddat period. Relevant part of clause (a) cannot be read as "reasonable and fair provision or maintenance. .....
>
> Since the main purpose of the statute is to protect the interests of the divorced muslim woman, even if there is any ambiguity in the language of the statute, or even if two interpretations are equally possible, that interpretation which is reasonable and would protect the interests of divorced muslim women has to be adopted by the court. ...
>
> Besides paying maintenance to the divorced wife for the Iddat period, former husband has to provide reasonably and fairly for the future needs

> of the divorced wife, i.e., use of the divorced wife after the period of Iddat period and till her marriage or death."

13. I am of the view that the learned Sessions Judge was not right in holding that the educational needs of the divorced wife are quite irrelevant for fixing the quantum of `reasonable and fair provision and maintenance' under Section 3 of the Act. It is not disputed that at the time of marriage the petitioner was a student. There is no evidence to indicate that she discontinued her studies; or that at the time of adducing evidence or at the time of disposal of the case she was not undergoing her studies. To continue her studies is also a need for which 'provision' is to be made. She lost the support of her husband. She continues to be a divorced woman. Denying education is not at all justified in such circumstances. Only with the help of education, in future, she could sustain herself and maintain her child. Though as rightly held by the learned Sessions Judge, a former husband cannot be mulcted with the liability to provide for the expensive higher education of the divorced wife, the desire of the wife to continue her studies in the

normal and usual way cannot be said to be unreasonable. The fact that she was undergoing studies is also a relevant factor in fixing "reasonable and fair provision and maintenance". In other words, the fact that she was studying at the time of marriage and she wanted to continue her studies after divorce is not an irrelevant factor in fixing the quantum of "reasonable and fair provision and maintenance" under Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act. I am of the view that the decision depends on the facts and circumstances of each case and a straight jacket formula cannot be evolved on this point. The needs of the divorced woman are relevant in fixing the quantum of "reasonable and fair provision and maintenance". `Maintenance' includes the expenses for maintenance of a woman in the same way as she was being maintained before divorce and if the divorced woman was a student at the relevant time, it includes the normal educational expenses as well. The expression "provision to be made" takes in the expenses for education as well. It is not reasonable to contend that "reasonable and fair provision and maintenance"

represents only the expenses to pull on life and that it amounts to only the expenses for food and clothing. All reasonable amenities in life of a divorced woman which she enjoyed at the time of and during the continuance of marriage could also be expected to be continued in her future life after divorce as well. The quantum of reasonable and fair provision and maintenance should be fixed, to my mind, taking into account the status of life of the divorced woman at the time of marriage and during the continuance of marriage.

14. In the facts and circumstances of the case, I am of the view that the learned Sessions Judge was not fully justified in reducing the amount of reasonable and fair provision from Rs.Three lakhs to Rs.Two lakhs. At the same time, the claim for Rs.Three lakhs also is excessive. Nine years elapsed after the divorce. Taking into account the admitted and proved facts in the case, it is only just and reasonable to fix the quantum of reasonable and fair provision and maintenance at Rs.2,50,000/-. In modification of the

order passed by the learned Sessions Judge, I hold that the petitioner- divorced wife is entitled to a sum of Rs.2,50,000/- as reasonable and fair provision and maintenance. The maintenance awarded during iddat period is confirmed.

Crl.M.C.No.11879 of 2002, filed by the former husband is devoid of merits and it is accordingly dismissed. Crl.R.P.No.575 of 2003 is partly allowed as indicated above.

(K.T.SANKARAN)
Judge

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K.T.SANKARAN, J.

CRL.R.P.NO.575 OF 2003
and
CRL.M.C.NO.11879 OF 2002

O R D E R

27th September, 2006